

**INTHEUNITEDSTATESDISTRICTCOURT
FORTHEEASTERNDISTRICTOFPENNSYLVANIA**

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JAMESJ.COLITAS,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
AVENTISCROPSCIENCEUSA	:	NO.02-932
HOLDINGIIINC.andAVENTIS	:	
CROPSCIENCEUSALP,	:	
	:	
Defendants.	:	
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ORDERANDMEMORANDUM

ORDER

ANDNOW , this9thdayofAugust,2002,uponconsiderationofDefendants’Partial
MotiontoDismiss(DocumentNo.5,filedMay8,2002);Plaintiff’sBriefinOppositionto
Defendants’MotiontoDismiss(DocumentNo.7,filedMay22,2002);relatedfilingsand
correspondencetotheCourt, **ITISORDERED** that,forthereasonsstatedinthefollowing
Memorandum,Defendant’sPartialMotiontoDismissis **GRANTED**,andCountIIofPlaintiff’s
Complaint–theERISACount–is **DISMISSEDWITHPREJUDICE** .

ITISFURTHERORDERED thatdefensecounsel’sJuly25,2002,lettertotheCourt
andplaintiff’scounsel’sJuly29,2002,lettertotheCourt,bothofwhichletters ¹addressissues
raisedinDefendants’PartialMotiontoDismiss,shallbe **DOCKETED**withthisOrderand
Memorandum.

¹BothlettersareappendedtothisOrderandMemorandum.

MEMORANDUM

I. BACKGROUND

On April 12, 2002, plaintiff, James J. Colitas, filed a two-count Amended Complaint² alleging, in Count I, that the December 31, 1999, termination of his employment with Agr-Evo USA Company violated the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and, in Count II, that the termination violated Section 510 of ERISA, 29 U.S.C. § 1140 (“Section 510”). In their Partial Motion to Dismiss, defendants argue that, because plaintiff’s Section 510 claim is barred by the statute of limitations, Count II of the Amended Complaint should be dismissed. As discussed below, the Court concludes that, in light of the Third Circuit’s recent decision in Anderson v. Consol. Rail Corp.,³ –F.3d–, No. 01-1518, 2002 WL 1625541 (3d Cir. July 23, 2002), defendants’ position is correct, and plaintiff’s Section 510 claim is barred by the statute of limitations.

II. DISCUSSION

Neither Section 510 of ERISA,³ nor the provision allowing enforcement of the rights

²The original Complaint was filed on February 22, 2002. Plaintiff filed the Amended Complaint before defendants filed any responsive pleading.

³Section 510 provides, in relevant part, that:

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan... or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan.

29 U.S.C. § 1140.

created in Section 510, 29 U.S.C. § 1132, provide a specific statute of limitations. “Under such circumstances, the appropriate period is determined by reference to the state statute of limitations governing cases most analogous to the cause of action asserted by the plaintiffs.” Gavalik v. Continental Can Co., 812 F.2d 834, 843 (3d Cir. 1987). As the Third Circuit held in Gavalik, claims under Section 510 are analogous to claims alleging employment discrimination. Id. at 846 (stating that “[t]he gravamen of appellants’ complaint... is that they were singled out for adverse treatment on the basis of their unvested pension eligibility”). Because, at the time, no specific Pennsylvania statute governed employment discrimination claims, the Gavalik court affirmed the district court’s holding that Pennsylvania’s six-year residuary statute of limitations set forth in 42 Pa.C.S.A. § 5527 should apply to Section 510 claims.

After Gavalik was decided, however, a panel of the Pennsylvania Superior Court held that employment discrimination claims were subject to the two-year statute of limitations for tortious conduct set forth in 42 Pa.C.S.A. § 5524(7). Raleigh v. Westinghouse Elec. Corp., 550 A.2d 1013, 1014 (Pa. Super. Ct. 1988), appeal denied, 563 A.2d 499 (1989). Upon considering this change of state law, a court in this District held that, notwithstanding Gavalik’s application of a six-year statute of limitations, Section 510 claims are governed by the two-year statute of limitations discussed in Raleigh v. Anderson v. Consol. Rail Corp., No. Civ. A. 98-6043, 1999 WL 239054, at *5 (E.D. Pa. April 7, 1999) (Bartle, J.) (concluding that, after Raleigh, “the six-year statute of limitations applied in Gavalik no longer applies to a § 510 claim analogous to a wrongful discharge”).

Defendants, in filing their Partial Motion to Dismiss, argued that the district court’s holding in Anderson was dispositive in this case. Because plaintiff’s ERISA claim accrued, at

the latest, on December 31, 1999, the date of plaintiff's termination,⁴ and because plaintiff filed his Complaint more than two years later, on February 22, 2002, defendants argued that plaintiff's ERISA claim is barred by the two-year statute of limitations. In his response, plaintiff argued, *inter alia*, that Anderson was incorrectly decided, and that plaintiff's claim should be governed by either a three-, four-, or six-year statute of limitations.

On July 23, 2002, the Third Circuit affirmed the Anderson court's dismissal of the Section 510 claim on the statute-of-limitations ground. See Anderson, 2002 WL 1625541, at *6-7. Defendants, in correspondence to the Court, argued that "the Third Circuit's ruling is dispositive, and... Count II of [plaintiff's] Complaint should be dismissed because it was not filed within two years of his discharge." The Court agrees with defendants; the Third Circuit's ruling in Anderson is indeed dispositive in this case, and plaintiff's Section 510 claim is barred by the statute of limitations.

In reaching this conclusion, the Court notes that plaintiff's argument in correspondence to the Court that " Anderson is not... guiding precedent, since the District Court's application of the two-year statute of limitations was not contested by Plaintiffs" is off the mark. Plaintiff reads the Third Circuit's decision in Anderson much too narrowly. Although it is correct that the plaintiffs in Anderson did not challenge the District Court's determination "that their ERISA § 510 claim is most analogous to a wrongful discharge," Anderson, 2002 WL 1625541, at *7, the Third Circuit explicitly affirmed the position advanced by defendants in this case. Specifically, the court concluded, as follows:

Because Raleigh held in 1988 that a two-year statute of limitations

⁴Plaintiff does not dispute that this cause of action accrued on December 31, 1999.

applies to wrongful discharges in Pennsylvania, and the District Court found that the plaintiffs' § 510 claim here is most analogous to a wrongful discharge, the District Court did not err in holding that the two-year statute of limitations is applicable to the plaintiffs' § 510 claim.

Id. This Court concludes that this language can only be read to mandate the application of a two-year statute of limitation to plaintiff's Section 510 claim.

Finally, to the extent that plaintiff attempts to distinguish his claim from that at issue in Anderson, the Court rejects that argument. The cases are directly analogous. In Anderson, the plaintiffs were thirty employees of Consolidated Rail Corp. who were involuntarily terminated from their employment in July 1995. Id. at *1. In their Section 510 claim, the plaintiffs asserted that their employer terminated them "to preclude them from participating in an anticipated voluntary buy-out program" that was "more generous than the severance package offered to the involuntarily terminated plaintiffs." Id.

In this case, plaintiff alleges that "Defendant[sic] actions action[sic] in terminating Plaintiff was for the purpose of depriving Plaintiff of his rights to employee health, welfare and pension benefits in violation of Section 510 of ERISA," Amended Complaint at ¶ 41, and that, as a result of his termination, "Plaintiff's retirement income, 401k value, insurance and other benefits have been considerably reduced." Id. at ¶ 26. In both Anderson and the instant case, the "gravamen" of the alleged violations is that the plaintiffs "were singled out for adverse treatment" so as to prevent them from receiving retirement-related benefits. Gavalik, 812 F.2d at 846.

Plaintiff's Section 510 claim is, at its core, a claim for wrongful discharge. It is, therefore, indistinguishable from the claim at issue in Anderson, and a two-year statute of

limitations must apply.

III. CONCLUSION

For the foregoing reasons, the Court grants Defendants' Partial Motion to Dismiss and dismisses, with prejudice, the Section 510 claim raised in Count II of plaintiff's Complaint.

BY THE COURT:

JANE DUBOIS, J.